



*Community Development*  
39550 Liberty Street  
Fremont, CA 94538

## **ZONING ADMINISTRATOR**



### **General Order of Business**

1. Preliminary (Call to Order – 2:00 p.m.)
2. Public Hearing Items
3. Adjournment

### **Addressing the Zoning Administrator**

Any member of the public may speak on any item under review by the Zoning Administrator after “being recognized” by the Zoning Administrator. After the Zoning Administrator recognizes you, state your name and address. Generally, after the item is introduced, the order of presentation begins with staff introduction and presentation. The project applicant or their authorized representative may then comment. Next, interested members of the public may speak. Additional comments by the applicant or staff, as appropriate, may follow. At the close of testimony, the matter will return to the Zoning Administrator for discussion and action.

### **General Information**

The Zoning Administrator usually holds hearings on the first and third Mondays of each month, except September (9/15 only). Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the Planning Division (510) 494-4440.

Plans and other supporting documents are available at the Development Services Center at 39550 Liberty Street (between Stevenson Boulevard and Walnut Avenue). Plans and other supporting documents may be viewed any day until noon the day of the meeting. Copies will be provided at cost when feasible. The Development Services Center is open 8:00 a.m. to 4:00 p.m., Mondays through Thursdays; and 8:00 a.m. to 12:00 p.m., Fridays.

We appreciate your interest in the conduct of your City’s business. Information about the City or the items discussed in this report may be referred to:

Zoning Administrator  
City of Fremont  
Planning Division  
39550 Liberty Street, P.O. Box 5006  
Fremont, CA 94537-5006  
Telephone: 510-494-4440

**City Staff**  
Barbara Meerjans, Zoning Administrator

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**AGENDA**  
**ZONING ADMINISTRATOR PUBLIC HEARING MEETING 2:00 P.M.**  
**CITY OF FREMONT, CALIFORNIA**  
**39550 LIBERTY STREET**  
**RANCH HIGUERA CONFERENCE ROOM**

**February 2, 2009**

**1. PRELIMINARY**

**1.1 CALL TO ORDER**

**2. CONSENT CALENDAR - None**

**NOTICE: ITEMS ON THE PUBLIC HEARING CALENDAR MAY BE MOVED TO THE CONSENT CALENDAR IF NO ONE IS PRESENT TO SPEAK ON THE ITEMS. ALL APPLICANTS AND INTERESTED PERSONS ARE ADVISED TO BE PRESENT AT THE START OF THE MEETING.**

**3. PUBLIC HEARING ITEMS**

**Item 1. ALCAL ARCADE FACILITY – 42950 OSGOOD ROAD – (PLN2009-00008)** – to consider a Zoning Administrator Permit to allow an 8,000 gallon above-ground fuel tank with an overhead canopy and fuel dispenser located at 42950 Osgood Road in the Irvington Planning Area. This project is categorically exempt from review under CEQA pursuant to Section 15303(e), New Construction.  
Project Planner – Spencer Shafsky, (510) 494-4452, [sshafsky@fremont.gov](mailto:sshafsky@fremont.gov)

Recommended Action: Approve, based on findings and subject to conditions.

**Item 2. SHANAZ BEGUM LARGE FAMILY DAYCARE – 4088 GORDON STREET – (MIS2009-00204)** – to consider a Zoning Administrator Permit for a large family daycare to allow up to fourteen children located at 4088 Gordon Street in the Northern Plain Planning Area. This project is exempt from the California Environmental Quality Act under guideline 15274, Family Daycare Homes.  
Project Planner – Tanu Jagtap, (510) 494-4537, [tjagtap@fremont.gov](mailto:tjagtap@fremont.gov)

Recommended Action: Approve, based on findings and subject to conditions.

**4. ADJOURNMENT**

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## ZONING ADMINISTRATOR PERMIT

### STAFF REPORT FEBRUARY 02, 2009

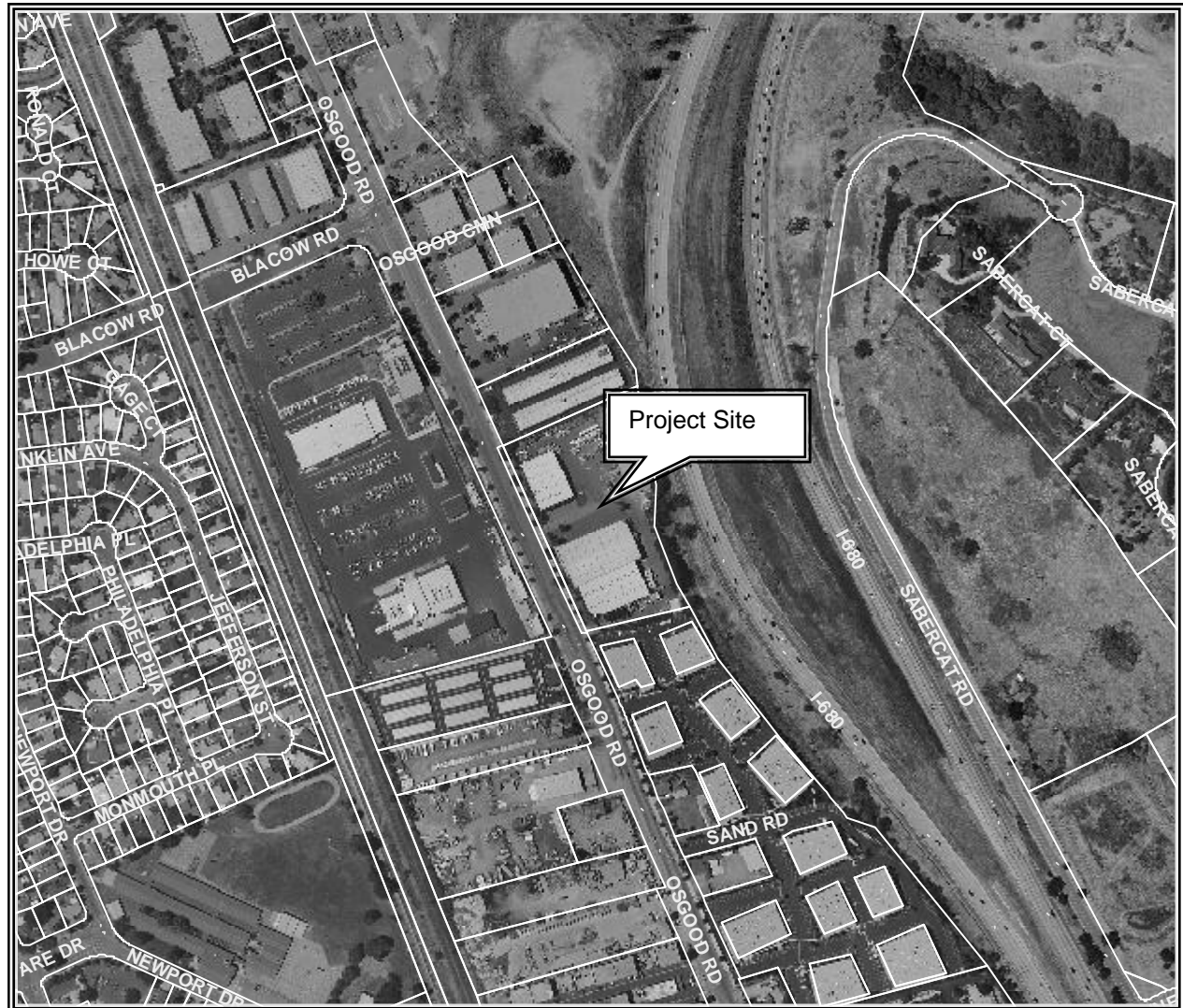
<b>Project:</b>	<b>ALCAL ARCADE FACILITY – (PLN2009-00008)</b>
<b>Proposal:</b>	To consider a Zoning Administrator Permit for an outdoor 8,000 gallon fuel tank with fuel dispenser.
<b>Recommendation:</b>	Approve, based on findings and subject to conditions.
<b>Location:</b>	42950 Osgood Road in the Industrial planning area. APN 525-0331-020-04 (See aerial photo next page)
<b>Area:</b>	8,000 gallon fuel tank on a 4.5-acre lot
<b>People:</b>	Matt Crisp, Applicant Art Gardner, Owner Spencer Shafsky, Staff Planner (510) 494-4452; <a href="mailto:sshafsky@fremont.gov">sshafsky@fremont.gov</a>
<b>Environmental Review:</b>	This project is categorically exempt under CEQA guideline 15311, Accessory Structures
<b>General Plan:</b>	Light Industrial
<b>Zoning:</b>	Light Industrial (I-L)

#### **EXECUTIVE SUMMARY:**

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The applicant is requesting approval of a Zoning Administrator Permit to allow an 8,000 gallon above ground fuel tank with fuel dispensers. The purpose of the tank is for fueling vehicles associated with an on-site roofing business and will be used during business hours only, which are Monday through Friday from 7:00 a.m. to 5:00 p.m. Staff recommends approval of the Zoning Administrator Permit subject to the conditions of approval.

**Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.**



**SURROUNDING LAND USES:** North: Light Industrial  
South: Planned District P-99-4  
East: Interstate 680  
West: Light Industrial

## **BACKGROUND AND PREVIOUS ACTIONS:**

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The project site is a 4.56 acre parcel with three existing warehouse buildings. The site was previously occupied by L&L Nursery and is now occupied by Alcal-Arcade Roofing Company.

## **PROJECT DESCRIPTION:**

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Alcal-Arcade Contracting is an existing roofing business that operates at 42950 Osgood Road. They are requesting to install an 8,000 gallon above ground split compartment fuel tank; 3,000 gallon gas and 5,000 gallon diesel and related pumping equipment. The tank is a fire and ballistic rated U.L. 2085 protected type tank. The purpose of the tank is for fueling Alcal-Arcade vehicles only during normal operating hours, Monday through Friday from 7:00 a.m. to 5:00 p.m.

## **PROJECT ANALYSIS:**

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### ***General Plan Conformance:***

The existing General Plan land use designation for the project site is Light Industrial. The proposed project is consistent with the existing General Plan land use designation for the project site because it is an accessory structure. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

HEALTH AND SAFETY (HS) GOAL 6:    MINIMUM FEASIBLE RISK TO LIVES AND  
PROPERTY DUE TO THE USE AND STORAGE OF  
HAZARDOUS MATERIALS AND WASTE

Objective HS6.2:                      Sufficient regulation of the storage, transport and handling of hazardous materials within the City

Analysis: The applicant is required to comply with the City of Fremont's hazardous materials storage requirements.

### ***Zoning Regulations:***

As set forth in Section 8-22143.3 of the Fremont Municipal Code (FMC), Medium User Sites of Group B Chemicals are allowed in the existing I-L district subject to a Zoning Administrator Permit.

### ***Parking:***

The proposed site is fully developed with adequate parking, egress and ingress locations. The fuel tank is proposed in a location that is vacant and not used for parking or circulation.

***Applicable Fees:***

This project will be subject to Citywide Development Impact Fees. These fees may include fees for fire protection, capital facilities and traffic impact. All applicable fees shall be calculated and paid at the fee rates in effect at the time of building permit issuance.

***Environmental Review:***

The proposed project is categorically exempt under guideline 15311 Accessory Structures of the California Environmental Quality Act.

**PUBLIC NOTICE AND COMMENT:**

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Public hearing notification is applicable. A total of 34 notices were mailed to owners and occupants of property within 300 feet of the site. The notices to owners and occupants were mailed on January 20, 2009. A Public Hearing Notice was published by *Tri City Voice* on January 21, 2009.

**ENCLOSURES:**

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***Exhibits:***

- Exhibit "A" "Site plan, elevations "
- Exhibit "B" "Findings and Conditions"

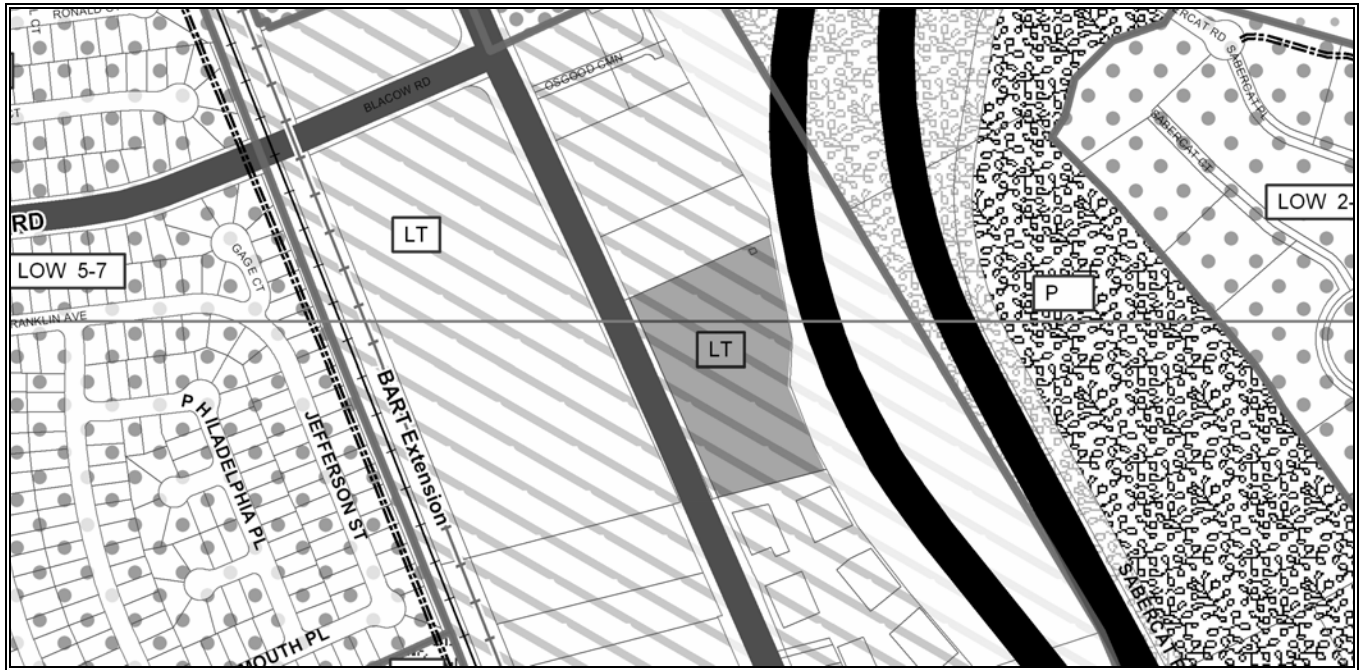
**RECOMMENDATION:**

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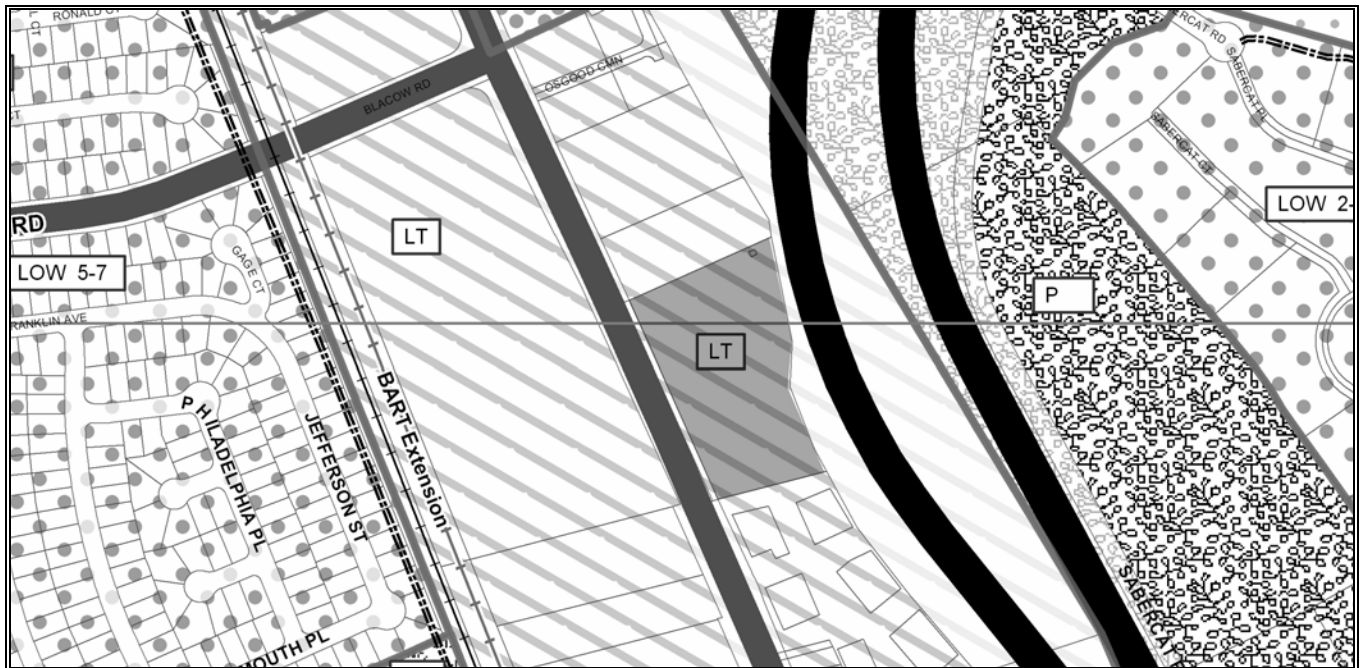
1. Hold public hearing.
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) under 15311 of the CEQA guidelines because it is an accessory structure to the primary use.
3. Find Zoning Administrator Permit PLN2009-00008 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Health and Safety Chapter as enumerated within the staff report.
4. Approve Zoning Administrator Permit PLN2009-00008, as shown on Exhibit "A", subject to findings and conditions in Exhibit "B".



**Existing Zoning**  
Shaded Area represents the Project Site



**Existing General Plan**



**EXHIBIT “B”**  
**Findings and Conditions of Approval**  
**For PLN2009-00008, Alcal Arcade Facility Zoning Administrator Use Permit**  
**42950 Osgood Road**

**FINDINGS:**

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Zoning Administrator dated February 02, 2009, incorporated hereby.

*Zoning Administrator Permit Findings:*

- a. The proposed use is consistent with the general plan because hazardous materials storage tanks are allowed in the Industrial zoned areas;
- b. The site is suitable and adequate for the proposed use because it is an industrial zoned property and the storage tank is not near residential properties;
- c. The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services because the site has adequate parking and ingress and egress locations;
- d. The proposed use would not have a substantial adverse economic effect on nearby uses because the fuel tank will not economically effect nearby uses;
- e. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood or the community at large because the storage tank is not located near residential properties;
- f. The proposed design is compatible with adjacent uses within the district and the surroundings of the proposal because it is located in an industrial zoned area.

**CONDITIONS OF APPROVAL:**

- A-1 The applicant shall comply with the provisions of the permits required from any state or regional agencies, including, but not limited to, the Bay Area Air Quality Management District (BAAQMD), Regional Water Quality Control Board (RWQCB), Union Sanitary District's (USD) POTW and the Alameda County Department of Environmental Health.
- A-2 The applicant shall meet all requirements in the 2007 California Fire Code and local Ordinance #32-2007.
- A-3 The applicant shall contact the City's Hazmat Technician to register with the Above Ground Petroleum Storage Program.
- A-4 Building address to be visible from the public street.

- A-5 The fuel tank and dispenser shall be for the exclusive use of Alcal Arcade business use only and shall only be used during normal operating hours, Monday through Friday from 7:00 a.m. to 5:00 p.m.
- A-6 The applicant shall apply for a separate building permit for the installation of the fuel tank and the construction of the required overhead canopy.
- A-7 If the Planning Director finds evidence that the Conditions of Approval have not been fulfilled or that the use or uses have or have resulted in a substantial adverse effect on the health, and/or general welfare of uses of adjacent or proximate property, or have a substantial adverse impact on the public facilities or services, the Director may refer this approval to the Planning Commission for review. If, upon such review, the Commission finds that any of the results stated above have occurred, the Commission may modify or revoke this approval.

**END OF CONDITIONS**

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## ZONING ADMINISTRATOR PERMIT

### STAFF REPORT FEBRUARY 02, 2009

<b>Project:</b>	<b>SHANAZ BEGUM LARGE FAMILY DAYCARE – (MIS2009-00204)</b>
<b>Proposal:</b>	To consider a Zoning Administrator Permit for a large family daycare to allow up to fourteen children.
<b>Recommendation:</b>	Approve, based on findings and subject to conditions.
<b>Location:</b>	4088 Gordon Street in the Northern Plain planning area. APN 543-0405-026-00 (See aerial photo next page)
<b>Area:</b>	5,040 square foot existing lot.
<b>People:</b>	Begum Shanaz, Applicant Tanu Jagtap, Staff Planner (510) 494-4537; <a href="mailto:tjagtap@fremont.gov">tjagtap@fremont.gov</a>
<b>Environmental Review:</b>	This project is exempt from the California Environmental Quality Act under guideline 15274, Family Daycare Homes.
<b>General Plan:</b>	Low Density Residential
<b>Zoning:</b>	R-1-X-40.80 Single-Family Residence District

#### **EXECUTIVE SUMMARY:**

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The applicant is requesting a Zoning Administrator Permit for a Large Family Daycare to allow the supervision of up to 14 children. The applicant proposes to operate the daycare Monday through Friday from 7:00 a.m. until 7:00 p.m.



Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.

**SURROUNDING LAND USES:**    North: Residential    South: Residential  
    East: Residential    West: Residential

## **BACKGROUND AND PREVIOUS ACTIONS:**

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The project site is an existing single family residence within an established neighborhood. The applicant currently has a State licensed small family daycare, which allows the supervision of up to 8 children.

## **PROJECT DESCRIPTION:**

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The applicant is requesting approval for a Zoning Administrator Permit for a Large Family Day Care facility for up to 14 children. The proposed hours of operation are 7:00 A.M. to 7:00 P.M. Monday through Friday.

## **PROJECT ANALYSIS:**

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**State of California Health and Safety Code Conformance:** The proposed project is consistent with the State of California Health and Safety Code because the State policy recognizes the need for family daycare facilities to be provided in residential districts and has preempted local regulation by limiting City authority to regulate Large Family Day Care facilities in residential districts.

- **California Health and Safety Code Section 1597.40(a):** It is the intent of the Legislature that family day care homes for children should be situated in normal residential surroundings so as to give children the home environment, which is conducive to healthy and safe development. It is the public policy of this state to provide children in a family day care home the same home environment as provided in a traditional home setting.

The Legislature declares this policy to be of statewide concern with the purpose of occupying the field to the exclusion of municipal zoning, building and fire codes and regulations governing the use or occupancy of family day care homes for children, except as specifically provided for in this chapter, and to prohibit any restrictions relating to the use of single-family residences for family day care homes for children except as provided by this chapter.

California Health and Safety Code Section 1597.46 allows a city limited authority to regulate Large Family Day Care within homes on lots zoned for single-family dwellings. A city has three proposed regulatory routes:

1. Classify Large Family Day Care as a permitted use;
2. Grant a non-discretionary permit for Large Family Day Care which meets reasonable standards related to spacing, concentration, traffic, parking and noise; or
3. Require a proposed Large Family Day Care to obtain a permit to use a lot zoned for single-family dwellings. The use permit must be granted if the use meets the reasonable standards related to spacing, concentration, traffic, parking and noise.

City of Fremont has selected regulatory route (3) for Large Family Day Care. The Large Family Day Care must obtain a Zoning Administrator Permit and meet the standards set forth in Fremont Municipal Code Section 8-22147.5.

***General Plan Conformance:***

The existing General Plan Land Use designation for the project site is Low Density Residential (5 to 7 dwelling units per acre). The proposed project is consistent with the existing General Plan Land Use designation for the project site because the General Plan allows Large Family Day Care facilities within the Residential Land Use designation. The General Plan recognizes in the Land Use Chapter under Day Care (Private Sector, Non-Municipal – p.3-84) that “the labor participation rates show a growing number of dual working parents and single parents. This indicates a need for care and supervision of children outside the home and outside regular school hours.” The following General Plan Goals, Objectives, and Policies are applicable to the proposed project:

- **Land Use Policy LU 1.1, Allowed Uses and Densities:** Schools, Childcare Centers, Public and Semi Public Facilities (e.g., churches) and Nursing Care facilities. These uses may be allowed, although conditions may be established to limit the impacts of these uses on residents.
- **Land Use Goal LU 8:** Provision and enhancement of day care services through a partnership of all sectors of the community.
  - **Land Use Policy LU 8.1:** To accommodate day care needs of children, frail elderly and developmentally disabled adults, services shall be allowed in any commercial, industrial or residentially designated area, subject to conditions regarding size of facility, access, parking and the availability of outdoor space.
  - **Land Use Policy LU 8.2:** Care facilities should be located to minimize exposure to noise, localized air pollutions sources and other environmental hazards.
- **Health & Safety Policy HS 8.1.2:** Protect the noise environment in existing residential areas.

***Zoning Regulations:***

The project site has a zoning designation of R-1-X-40.80, Single Family Residence District. The Large Family Day Care facility use is a permitted use with a Zoning Administrator Permit within this district. Large Family Day Care facilities are required to obtain a license from the California Department of Social Service, Community Care Licensing Division for Family Child Care Homes. The applicant has filed an application with the Community Care Licensing Division. Additionally, the use, as proposed and conforming to the recommended conditions of approval (Exhibit “A” Findings and Conditions of Approval), would be in compliance with Ordinance No. 2045, Large Family Day Care Homes, adopted by the City Council on September 21, 1993 (Fremont Municipal Code Section 8-22147.5.)

Section 8-22147.5 of the Fremont Municipal Code provides standards for a Large Family Day Care facility, which, in part, authorizes the Zoning Administrator and/or Planning Commission to impose operational conditions on its use. The permit allows for, and ensures that, the proposed use is



compatible with its surrounding and location. Operational conditions are imposed to offset potential impacts caused by the facility to adjacent neighboring properties, such as impacts associated with parking, traffic, noise and outdoor play areas.

Generally, the main concerns of adjacent property owners are that of noise, traffic, parking and the safety of children in care. Conditions are therefore included to ensure that the facility will operate in a manner compatible with the neighborhood. Further, should the Zoning Administrator find at anytime that conditions have not been fulfilled or the use has caused an impact on adjacent neighboring properties, the applicant may be required to implement additional mitigation measures.

***Parking:***

Section 8-22147.5 of the Fremont Municipal Code requires a minimum of two parking spaces available to serve the customers during the facility's hours of operation. The parking spaces will be required to be located in a manner to be readily and safely utilized by the customers. (Conditions 8 & 9) In addition, the applicant is requesting the customers to agree to a 10-minute curb time for drop-off and pick-up, to parking only in the subject site's driveway or on the curb next to the subject site so as not to restrict the flow of traffic for the neighbors.

**PUBLIC NOTICE AND COMMENT:**

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Public hearing notification is applicable. A total of 12 notices were mailed to owners and occupants of property within 100 feet of the site. The notices to owners and occupants were mailed on January 20th, 2009. A Public Hearing Notice was published by *Tri-City Voice* on January 21<sup>st</sup>, 2009.

On October 15<sup>th</sup>, 2008, staff received a request to hold a Public Hearing for the proposed project. (Informational Item 1.)

On September 29, 2008, a neighbor emailed concerns about the effects the daycare would have on the neighborhood. (Informational Item 1.)

**ENCLOSURES:**

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***Exhibits:***

Exhibit "A" Findings and Conditions of Approval

***Informational Items:***

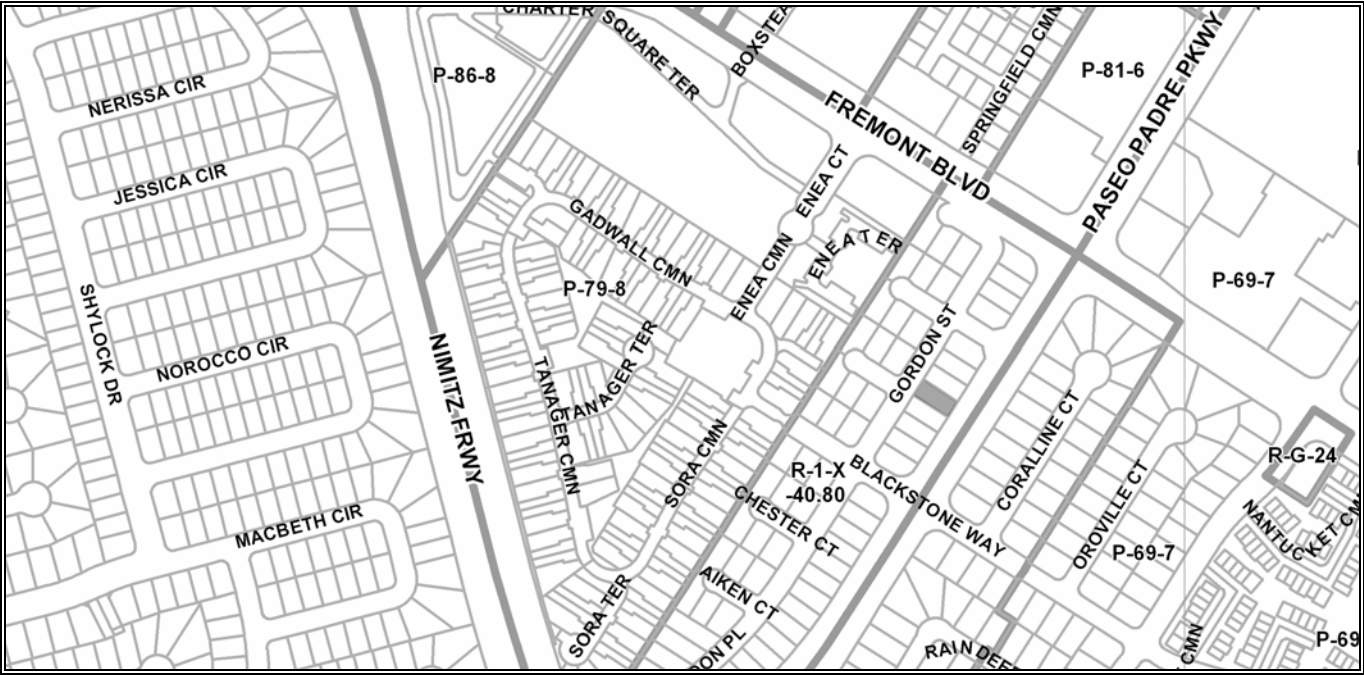
1. Shanaz Begum Large Family Daycare Application
2. Correspondence from Yuk Louie

**RECOMMENDATION:**

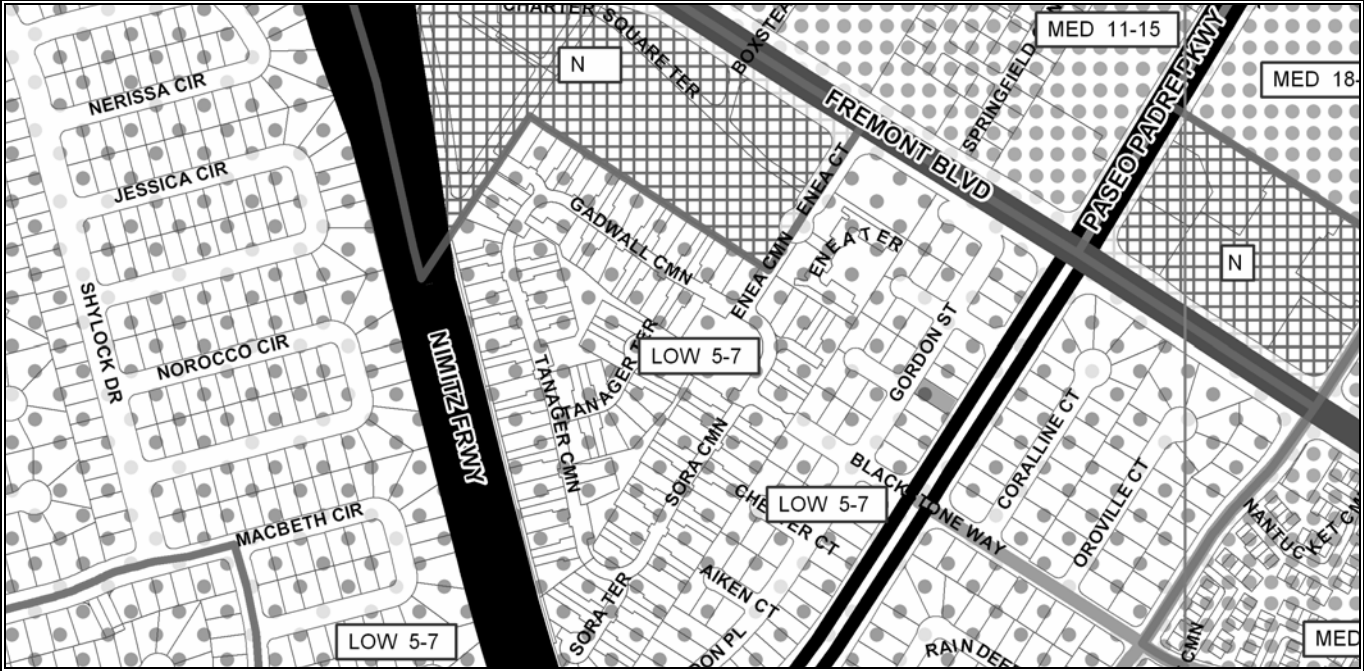
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1. Hold public hearing.
2. Find that the project is exempt from the California Environmental Quality Act (CEQA) under guideline 15274.
3. Find Shanaz Begum Large Family Daycare is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Residential Land Use Policies Chapter as enumerated within the staff report.
4. Approve Shanaz Begum Large Family Daycare (MIS2009-00204), subject to findings and conditions in Exhibit "A".

# **Existing Zoning** Shaded Area represents the Project Site



## **Existing General Plan**



**EXHIBIT "A"**  
**Findings and Conditions of Approval**  
**For MIS2009-00204, Shanaz Begum Large Family Daycare**

**FINDINGS:**

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Zoning Administrator dated February 02, 2009, incorporated hereby.

- a. The project is statutorily exempt from the California Environmental Quality Act because it is for the permitting of a Family Day Care Home as defined in Section 15274 of the CEQA Guidelines.
- b. The site is suitable and adequate for the proposed use because, as the code requires, there are no other large family day care facilities within a 300-foot radius of the applicant's property. In addition, conditions of approval are incorporated to ensure that the use will not cause an adverse impact on its surroundings.
- c. The proposed use would not have a substantial adverse effect on traffic circulation and on the planned capacity of the street system or other public facilities or services because the large family daycare is being limited to the statewide limit of fourteen children. Two driveway spaces will be left open and available for the periodic drop-off and pick-up of children. Additionally, if a substantial adverse effect on traffic circulation is found to exist, the use may be reviewed and the Zoning Administrator may require implementation of a staggered drop-off and pick-up program for children.
- d. The proposed use would not have a substantial adverse economic effect on nearby uses because the Fremont Municipal Code and State law have provided for, and this site meets, the proper spacing of in-house facilities providing child care services to the community from established residence.
- e. The proposed use would not have a substantial adverse impact on the general welfare of persons residing in the community because day care operations, including temporary parking, will take place on private property, associated noise will be limited to an average  $L_{dn}$  of 60 decibels at the property line in accordance with the City of Fremont General Plan Health and Safety Element, and children will be supervised by an adult or adults in conformance with state law at all times.
- f. The use is consistent with the General Plan in that Land Use Policy LU 1.1 permits childcare facilities within residential districts, and the use conforms to all applicable standards set forth in the Municipal Code.

**CONDITIONS OF APPROVAL:**

1. Compliance with all applicable provisions of the Fremont Municipal Code and State of California and federal law.
2. Conformance with all specific requirements of Section 8-22147.5 of the Fremont Municipal Code, except as they may become inconsistent with State law pursuant to Section 1597.40 of the California Health and Safety Code.

3. The operator(s) of the facility must reside at the property.
4. The hours of operation will be generally limited to the hours of 7:00 a.m. to 7:00 p.m.
5. The number of children onsite, including those of the resident operator, shall not exceed fourteen at any time. Numbers and ages of children onsite at any given time shall be limited to those allowed by state law.
6. Adult supervision of the children at the facility shall be provided in accordance with California Law at all times during the hours of operation.
7. Noise levels caused by the operation of the facility shall not exceed 60 decibels at the property lines.
8. Use and location of play areas shall not cause any excessive discomfort for adjacent residents or property owners on the use of their property. Play areas shall not be located in the front yard of the home.
9. There shall be a minimum of two parking spaces available onsite for pick-up and drop-off during the facility's hours of operation. The operator shall be required to advise all customers in writing of the two designated spaces on the driveway serving as parking for dropping off and picking up children attending the facility. A copy of this letter shall be submitted to the Planning Division before the inspection conducted by the Fire Marshal.
10. The garage/carport shall be utilized for the parking of the residents' vehicles, and its use for any function of the facility's day care function is prohibited.
11. Any pets that may cause harm to the children must be restrained and placed in areas that are inaccessible to the children.
12. Solid fencing a minimum of six feet tall shall be required to enclose the rear and side yards of the property to prevent uninhibited access to the street or other properties.
13. The operator shall complete and file a Business Tax License for the Large Family Day Care operation with the City before the inspection is conducted by the Fire Marshal.
14. Clearance from the City of Fremont Fire Department for compliance with all regulations of the State of California Fire Marshal shall be required before the operation of the day care facility commences.
15. The Zoning Administrator must be notified, in writing, if any new additions to the facility and/or new accessory structures (such as a recreation room) are used as part of the day care operation.
16. The applicant acknowledges and agrees that, although the facility may be validly licensed by the State, failure to comply with local zoning regulations may subject the operator to citations issued by the City of Fremont.